O. T. 1930 ORIGINAL NOS. 6, 10 & 11,

Office Supreme Court, U.
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CHARLES ELMORE CRO
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1928.

STATE OF WISCONSIN, STATE OF MINNESOTA, STATE OF OHIO, and STATE OF PENNSYLVANIA, Complainants, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 7 Original.
STATE OF MISSOURI, STATE OF KENTUCKY, STATE OF TENNESSEE, STATE OF LOUISIANA, STATE OF MISSISSIPPI, and STATE OF ARKANSAS, Intervening Defendants.	
STATE OF MICHIGAN, Complainant, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 11 Original.
STATE OF NEW YORK, Complainant, *vs.* STATE OF ILLINOIS and SANITARY DISTRICT OF CHICAGO, Defendants.	No. 12 Original.

ANSWERING AFFIDAVIT ON BEHALF OF THE STATE OF NEW YORK TO MOTION OF CITY OF CHICAGO TO INTERVENE AS DEFENDANT.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.:*

Now comes ALBERT J. DANAHER, Assistant Attorney-General of the State of New York, who, answering the petition of the City of Chicago to be made an intervening party herein and being duly sworn, doth depose and say:

1. That the facts contained and set forth in said petition in Paragraphs Numbered 1 and 2 are not pertinent to the questions now being determined by the Special Master in accordance with the decision of this Court.

2. The fact that the City of Chicago takes its water supply from Lake Michigan is not and never has been in dispute in this controversy. The location of the City of Chicago, the course of the Chicago River and its branches, the location of the Sanitary Canal, the course of the Calumet and Little Calumet Rivers are all matters upon which evidence was received by the Special Master upon the hearings had before him and are facts found and discussed by him in his report (Report of the Special Master, pages 10 to 21 inclusive). The fact that industries are located on the banks of said rivers and canal was testified to and these industrial plants were described at length by witnesses sworn on behalf of the defendant Sanitary District of Chicago on the hearing of the case before the Special Master.

3. The effect of the opening of the Sanitary District Canal is discussed in the Special Master's Report, at Page 18, et seq. Evidence relating to the source of Chicago's water supply, the character of such supply, and the effect upon such water supply of the reduction of the diversion of water from Lake Michigan to 1000 second feet and to zero was given on behalf of the defendants as well as by witnesses for the complainant states, upon the hearing antecedent to the Special Master's Report. Reference is made thereto in the report. At Page 136 the Special Master said,"

> "Much expert testimony has been given on both sides with respect to the feasibility of sewage treatment works adequate to permit of a large reduction, or a complete cessation, of the diversion of water from Lake Michigan, while at the same time safeguarding the water supply which the lake affords." * * *

The public bathing beaches referred to in paragraph 8 of the petition were also the subject of testimony before the Special Master (Report of Special Master, page 136).

4. The decree for which the State of New York is asking is one which will carry out the decision of this court, viz.: that the Sanitary District of Chicago "construct and put in operation with all reasonable expedition adequate plants for the disposition of the sewage through other means than Lake diversion." If, in thus disposing of the sewage, filtration works are necessary to safeguard its water supply, the construction of said works is no more burdensome to Chicago than to other large cities where such plants have already been installed. Deponent further says that whatever may be necessary to be done in connection with the water supply of the city of Chicago is the direct result of the wrongful acts of the Sanitary District.

5. Deponent further shows that the relief prayed for in the bill of complaint of the State of New York was the complete cessation of the diversion of water from Lake Michigan by the Sanitary District of Chicago, for the purpose of disposing of the sewage of the district. As herein pointed out the effect of the cessation of this diversion upon the water supply of the City of Chicago was a matter upon which evidence was offered before the Special Master, prior to the submission of his report. The various officials of the City of Chicago, if they had read the bills of complaint herein, the testimony taken before the Special Master and the report submitted by him herein to this court, could not have been ignorant of the fact that the bill of complaint of the States of New York and Michigan both prayed for a complete cessation of the diversion. Having read the minutes of the hearings they must have known that testimony had been received as to the effect of such cessation on the water supply of said city. If they read the report of the Special Master they would have known that as to all the subjects referred to in the petition now submitted testimony has already been offered by both sides to the controversy and many of the facts discussed in the Master's report. While it is true the Sanitary District includes territory outside the City of Chicago it is also the fact that practically all the diversion from Lake Michigan has been for the purpose of dilluting the sewage of the city itself. The officials of that

city must of necessity have been aware of that fact. They knew of this controversy between the complaint states, the Sanitary District and the State of Illinois, and yet they sat idly by and waited until the case had been decided by this court. Now, when the only question left undetermined is the manner of enforcing the decision, they ask that the city of Chicago be made a party defendant. Deponent further says that the granting of this motion will delay the concluding of the taking of testimony by the Special Master and thus delay the entry of the decree by the Court.

6. Deponent further says that the City of Chicago has been guilty of laches in the making of the motion it now makes, and that no excuse has been shown for the delay, nor is any good reason shown for the granting of the order prayed for.

Deponent respectfully prays that this Honorable Court will deny the motion.

ALBERT J. DANAHER.

Subscribed and sworn to before me this
13th day of April, 1929.

ALFRED W. JONES,
Commissioner of Deeds, City of New York; N. Y. Co. Clerk's No. 12, Reg. No. 5-0; Kings Co. Clerk's No. 31, Reg. No. 105; Bronx Co. Clerk's No. 3, Reg. No. 30002; Queens Co. Clerk's No. 1443, Reg. No. 1162; Certificate filed in Richmond County. Commission Expires March 1st, 1930.